(29,774)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 464.

SWISS NATIONAL INSURANCE COMPANY, LIMITED, APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 19, 1923.

[fol. 1] **COURT OF APPEALS OF THE DISTRICT OF COLUMBIA**

No. 3842

SWISS NATIONAL INSURANCE COMPANY, LTD., a Corporation, Appellant,

vs.

THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States, Appellees.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. No. 39603

[Title omitted]

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

[fol. 2] IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

In Equity. 39603

[Title omitted]

BILL OF COMPLAINT—Filed November 28, 1921

The Plaintiff complains and says:

1. That plaintiff is a corporation duly incorporated under and by virtue of the laws of the Republic of Switzerland.

2. That defendant, Thomas W. Miller, resides in the District of Columbia, and is sued herein as Alien Property Custodian of the United States, and that the defendant, Frank White, also resides in the District of Columbia, and is sued as Treasurer of the United States.

3. That plaintiff is a citizen of the Republic of Switzerland, doing business, and having its principal office, at Basle, Switzerland.

4. That under its charter it was authorized to do a reinsurance business in Switzerland and elsewhere.

5. That in 1910 plaintiff conducted a fire insurance business in the United States of America through its branch office in New York

City, and continued to conduct this business under a license issued to it by the Government of the United States for some time after the United States entered the World War.

6. That at the time plaintiff began doing business in the United States, and ever since said time, plaintiff has been a corporation duly incorporated under the laws of the Swiss Republic.

7. That on, or about, the 18 day of Nov. 1918, the property of plaintiff, hereinafter more fully described, was taken over by the Alien Property Custodian, and all of said property, together with the income and accruals therefrom, is now in the possession and control of the defendants.

8. That the Swiss Republic has at no time been at war with the United States, but has at all times been a friendly neutral.

9. That by direction of the Government of Switzerland the Minister of Switzerland in Washington has brought the fact that plaintiff is a Swiss corporation and a citizen of Switzerland to the attention of the Secretary of State of the United States, and has requested that the property of plaintiff, taken over by the Alien Property Custodian, be returned to him.

[fol. 3] 10. That the property of plaintiff was taken over by the Alien Property Custodian upon the ground that, while a Swiss corporation, it was conducting a reinsurance business in a country at war with the United States.

11. That the war having ended plaintiff, on the 6th day of November, 1921, filed with the Alien Property Custodian notice of claim to the money and property, hereinafter described, upon forms provided for the purpose by the Alien Property Custodian.

12. That for the conduct of its business plaintiff had a large number of American securities used principally for deposit, according to law, with the various states for the better security of its policy holders.

13. That the property belonging to plaintiff in the hands of defendants consists of the following:

New York City Bonds	$5,000
" " " "	200,000
United States Government	100,000
Chicago Milwaukee & Puget Sound Ry. 1st Mtge	50,000
Illinois Central R. R. Ref. Mtge	50,000
Kansas City Ry. Terminal 1st Mtge	50,000
New York Ontario & Western Ry. Gen. Mtge	50,000
City of St. Louis Mo	50,000
Central Pacific Ry. 1st Ref. Mtge	100,000
Chicago & North Western Ry. Gen'l Mtge	50,000
Southern Pacific R. R. 1st and Ref. Mtge	50,000
Union Pacific R. R. 1st & Ref. Mtge	30,000
Virginian Ry. 1st Mtge	75,000
New York State Canal Improvement	50,000
New York City	50,000
New York City	50,000

Togther with all income and accruals and such other further property as may be in the hands of the Alien Property Custodian or the Treasurer of the United States belonging to plaintiff.

14. That the reason for possession of said money and property on the part of the Alien Property Custodian or the Treasurer of the United States has ceased, and plaintiff is entitled, both equitably and by provisions of Trading With the Enemy Act, to the return of its property with the increase thereof, changes therein, and income therefrom.

Wherefore, the plaintiff prays:

1. That a writ of subpœna be issued citing the defendants to appear and answer complaint;

2. That an order and decree be made and entered, requiring the defendants, the Alien Property Custodian and the Treasurer of the United States, to pay, assign, transfer, and deliver the said monies and property, with the increase thereof, changes therein, and income therefrom to the plaintiff, and

3. That such other and further relief be granted as the court shall deem proper.

Hoke Smith, Solicitor for Plaintiff.

[fol. 4] BOROUGH OF MANHATTAN,
State of New York:

Personally appeared Carl Schreiner, who on oath says that he is Attorney in Fact for the Swiss National Insurance Company, Ltd., for all the states of the United States of America, and as such swears that the statements contained in the foregoing petition are true.

Carl Schreiner.

Sworn to and subscribed before me this 19th day of November, 1921. Madeline Roth, Notary Public, New York County. [Seal.] N. Y. Co. Clerk's No. 199. N. Y. Co. Reg. No. 3014. Kings Co. Clerk's No. 3. Kings Co. Reg. No. 3005. Bronx Co. Clerk's No. 2. Bronx Co. Reg. No. 3. Commission Expires March 30, 1923.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

AMENDMENT TO BILL—Filed January 6, 1922

* * * * * * *

The Plaintiff amends the Bill of Complaint in the above stated case and says:

15. That the Plaintiff was and is a corporation incorporated under and by virtue of the laws of Switzerland, a country other than the

United States, and that Plaintiff prior to January 1st, 1917, did an insurance business and continued until the present year to do such business within the territory of Germany, but during the present year Plaintiff has sold its German business and has ceased doing business in Germany.

Hoke Smith, Solicitor for Plaintiff, Swiss National Insurance Co.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

MOTION TO DISMISS—Filed January 16, 1922

* * * * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Esquire, Attorney of the United States in and for the District of Columbia, separately and severally moving to dismiss the amended bill of complaint, and as their separate and several grounds for the said motion assign the following:

(1) That it appears affirmatively from the allegations of the [fol. 5] amended bill of complaint that the plaintiff herein is an enemy within the purview and meaning of the Trading with the Enemy Act, the amendments thereto and proclamations and executive orders issued thereunder;

(2) That it appears affirmatively from the allegations of the amended bill of complaint that the plaintiff herein has not stated facts sufficient to entitle it to equitable relief under Section 9 of the Trading with the Enemy Act as amended.

Wherefore, these defendants pray that they be dismissed with their costs in this behalf expended, and for such other and further relief to which in the premises they may be justly entitled.

Peyton Gordon, Attorney of the United States in and for the District of Columbia, Attorney for Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

OPINION OF COURT—Filed May 26, 1922

* * * * * * *

Section 2-*a* of the Trading with the Enemy Act refers to individuals, to partnerships, to other bodies of individuals, and also to corporations. Subdivision 1 of Section 9 of the amendment of June 5, 1920, refers to citizens or subjects of enemy States; Subdivision 6 of

said Section 9 refers to partnerships, associations or other incorporated bodies of individuals outside the United States or corporations incorporated within any other country than the United States and entirely owned by subjects or citizens of countries other than enemy countries. The plaintiff claims that the word "citizens" in Subdivision 1 of Section 9 of said amendment includes corporations. While it is true that our courts have held that for many purposes, especially with reference to the jurisdiction of the Federal courts, a corporation is a citizen of the state by which it is incorporated yet the word "citizens" does not necessarily include corporations.

Western Turf Association vs. Greenberg, 204 U. S., 359.

As corporations are expressly included in Subdivision 6 and are not expressly mentioned in Subdivision 1 of Section 9, I think the intention of Congress was not to include corporations within said Subdivision 6.

The only question that remains is the meaning of the words, "entirely owned at such time by subjects or citizens of nations, etc." other than enemy countries. The only meaning that can be given to this with reference to corporations issuing capital stock would be that the stock of such corporations be owned by subjects etc., and this [fol. 6] is the only construction that would give any meaning to this phrase.

The bill will be dismissed.

Jennings Bailey, Justice.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FINAL DECREE—Filed June 12, 1922

* * * * * * *

Upon consideration of the bill of complaint filed herein and motion to dismiss the same, filed on behalf of Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and upon consideration of the arguments of counsel on behalf of all parties, and plaintiff having elected in open court to stand upon its bill of complaint, it is by the court, this 12 day of June, 1922,

Adjudged, ordered and decreed, that the bill of complaint be, and the same hereby is, dismissed.

Jennings Bailey, Justice.

From the foregoing decree, plaintiff in open court notes an appeal to the Court of Appeals of the District of Columbia, and the bond for costs fixed at $100.00, or in lieu thereof a cash deposit of $50.00.

Jennings Bailey, Justice.

Memorandum

June 19, 1922.—$50 deposited in lieu of Appeal Bond.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

ASSIGNMENTS OF ERROR—Filed June 19, 1922

* * * * * * *

The Court, in the above stated case, having dismissed the bill of complaint, and the plaintiff, in open court, having given notice of an appeal to the Court of Appeals of the District of Columbia, the plaintiff assigns as the error committed by the trial Court, the rendition and entering by the Court of the judgment, order and decree dismissing the bill of complaint of plaintiff, above referred to.

Hoke Smith, Attorney for Plaintiff.

[fol. 7] IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed June 19, 1922

* * * * * * *

To the Clerk of the Supreme Court of the District of Columbia:

You will please prepare the following as the transcript of record on appeal to the Court of Appeals in the above entitled case.

1. The original bill and the amendment thereto.
2. Motion to dismiss.
3. Memorandum opinion of Justice Bailey.
4. Order of the court dismissing bill.
5. Appeal in open court from the said decree.
6. Memorandum of cash deposit of $50.00 in lieu of bond.
7. The above assignments of error.
8. This designation of the record.

Hoke Smith, Attorney for Plaintiff.

Service of the assignments of error and the designation of the transcript of record acknowledged this 16th day of June, 1922.

Dean Hill Stanley, Special Assistant to the Attorney General.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

ADDITIONAL ASSIGNMENTS OF ERROR—Filed June 23, 1922

* * * * * * *

The plaintiff in the above stated case, having heretofore filed assignments of error to the judgment rendered by the court, dismissing

the bill of complaint of plaintiff, now presents these additional assignments of error, before the expiration of 20 days from the date of the judgment complained of.

First, the court erred in the construction of paragraph "B" of Section 9, and in holding that the word "citizen" in subdivision 1 of paragraph "B" of section 9 did not include corporations, and the court erred in the construction placed upon subdivision six of said paragraph.

Second, the bill of complaint showed that the property of plaintiff was taken over by the Alien Property Custodian upon the ground that it was conducting a business in a country at war with the United States. The bill of complaint further showed that the war had ended, and that the reasons for the possession of said money and property on the part of the Alien Property Custodian or the Treasurer of the United States had ceased.

These and similar allegations in the bill of complaint gave the plaintiff a right to the return of its property under paragraph "A" [fol. 8] of section 9 of the Trading With the Enemy Act, and under the Act as a whole.

The court, for these reasons, erred in entering the judgment, order and decree dismissing the bill of complaint of plaintiff.

Hoke Smith, Attorney for Plaintiff.

To the Clerk of the Supreme Court of the District of Columbia:

You will please add to the transcript of record on appeal to the Court of Appeals in the above stated case, the above assignments of error.

Hoke Smith, Attorney for Plaintiff.

Service of the above assignments of error acknowledged this 23rd day of June, 1922.

Dean Hill Stanley, Special Asst. to the Atty. Gen.

SUPREME COURT OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 10, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 39603 in Equity, wherein Swiss National Insurance Company, Ltd., is Plaintiff and Thomas W. Miller as Alien Property Custodian et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 21st day of June, 1922.

Morgan H. Beach, Clerk. (Seal of the Supreme Court of the District of Columbia.) M. H./E. W.

Endorsed on cover: District of Columbia Supreme Court. No. 3842. Swiss National Insurance Company, Ltd., a corporation, appellant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, appellees. Court of Appeals, District of Columbia. Filed Jul. 7, 1922. Henry W. Hodges, clerk.

[fol. 9] In Court of Appeals of the District of Columbia

Argument of Cause

Thursday, February 8th, A. D. 1923.

* * * * * * *

[Title omitted]

The argument in the above entitled cause was commenced by Mr. Hoke Smith, attorney for the appellant.

[fol. 10] Friday, February 9th, A. D. 1923.

* * * * * * *

[Title omitted]

The argument in the above entitled cause was continued by Mr. Hoke Smith, attorney for the appellant, and by Mr. Dean H. Stanley, attorney for the appellees and was concluded by Mr. Hoke Smith, attorney for the appellant.

[fol. 11] Court of Appeals of the District of Columbia

[Title omitted]

Opinion

Argued before Smyth, Chief Justice; Robb, Justice, and Martin, Judge, United States Court of Customs Appeals.

Judge George Ewing Martin delivered the opinion of the Court:

Appeal from the Supreme Court of the District of Columbia.

This case arises under The trading with the enemy act, approved October 6, 1917, 40 Stat. L. 411, as amended June 5, 1920, 41 Stat. L. 977.

The suit was brought by the Swiss National Insurance Company,

Ltd., a Swiss corporation doing business in this country, against the Alien Property Custodian and the Treasurer of the United States, to recover possession of certain of its assets consisting of securities which it had deposited in this country as required by law, and which had been seized by the Custodian in November, 1918, the ground of the seizure being that the company although incorporated in Switzerland was also doing business within German territory and therefore was an enemy as defined by the act. The plaintiff admitted that it had been engaged in business in Germany at the time of the seizure, but alleged that it had since withdrawn from that country, and was no longer doing business therein. The plaintiff claimed that because of that fact, and also because the war had been officially declared at an end, there remained no justification for the retention of its property by the Custodian, and that in equity and under the law as amended it was entitled to recover the possession thereof, and it prayed for suitable relief.

[fol. 12] A motion to dismiss the bill was filed by the defendants upon the ground that the bill failed to aver that the corporation at the time of the seizure and at present, was entirely owned by subjects or citizens of neutral countries. The defendants contended that the omission of that averment was fatal to the bill. The court sustained the motion and dismissed the bill, from which decision the plaintiff appealed.

The plaintiff based its right to a recovery upon three grounds, to wit, first that no reason existed for the retention of the property by the Custodian in view of the fact that the war with Germany had been officially declared at an end, second that the enemy status of the plaintiff had ceased when it discontinued its business within enemy territory and accordingly that it was entitled to recover as a non-enemy under section 9 (*a*) of the act as amended, and third that it was entitled to recover as a citizen of a neutral country under the provisions of section 9 (*b*) of the act as amended.

We answer these claims as follows. It is certain that the sequestration of the property in question was authorized by the act. Under section 2 the plaintiff was an enemy, since it was doing business within enemy territory, and under section 7 enemy-owned property was made liable to seizure by the Custodian. It is equally certain that no subsequent change in the situation of the plaintiff could relieve the sequestered property from its status as enemy-owned property. Otherwise the law could not have been administered effectively. It would have been useless to seize enemy-owned property if the owner could recover it immediately by the simple expedient of changing his residence or his place of business. It is also certain that Congress did not intend that the official termination of the war should ipso facto entitle the owners of sequestered property to recover the same from the Custodian. Section 12 of the act reads in part as follows:

After the end of the war any claim of an enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct.

[fol.13] The act unmistakably discloses that Congress intended the Custodian to retain possession of the sequestered property after the end of the war, until the final disposition thereof should be determined by future legislation.

These conclusions negative all of the claims presented by the plaintiff except that made under Section 9 (*b*) of the amendment of June 5, 1920. That enactment provided that the owners of property thus sequestered should be entitled to recover possession thereof from the Custodian, if at the time of the sequestration and also of the demand therefor, they answered to certain descriptions, among which were the following, to wit:

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

* * * * * * *

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or * * *.

The plaintiff claims the right to a recovery herein under subsection (1), supra, upon the ground that it always was and still is a "citizen" of a neutral country, to wit, Switzerland. The defendants however contend that the word "citizen" as used in the subsection was not intended by Congress to include corporations but only natural persons. We think that the word "citizen" would ordinarily include corporations as well as natural persons, but in subsection (6), supra, Congress deals specifically with corporations for the purposes of the amendment, and thereby indicates that the first subsection was not intended to apply to them.

[fol. 14] The two subsections in question are cognate provisions of the same enactment, and should be construed together. It is elementary that where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to the subject as against general provisions in other parts of the act, although the latter standing alone would be broad enough to include the subject to which the more particular provision relates. Endlich, Interpretation of Statutes, Sec. 216. This rule sustains the foregoing conclusions, since subsection (6) treats of corporations in particular, whereas subsection (1) treats of citizens in general. Another rule of statutory construction which tends to sustain this interpretation is to be found in the maxim, Expressio unius est exclusio alterius, for according to that rule the provision in subsection (6) for a restricted class of corporations would impliedly exclude therefrom all corporations of an opposite character. Furthermore under the plaintiff's

interpretation subsection (6) would be denied any force or effect as part of the act, for if all corporations belonging to neutral countries are to be governed by subsection (1) as "citizens" of such countries, there remains none for subsection (6) to govern or refer to. The plaintiff undertakes to answer this view by the following statement;

There were corporations in Germany all the property of which and all the stock of which *was* owned by citizens of the United States, and citizens of countries with which the United States was not at war. Subsection 6 was intended to reach these organizations.

We cannot accept this interpretation of subsection (6). It may be possible that there existed some German corporations all the stock holders of which were citizens of the United States or of neutral countries, although we are without authority upon that subject. It does not appear however that such corporations, if any existed, were among the claimants whose property had been seized by the Custodian, and who were seeking a return thereof. They are nowhere [fol. 15] mentioned in the official reports or correspondence relating to the enactment which will be referred to later herein. Such corporations, if any existed, would have been German citizens or subjects and accordingly enemies under the primary purpose of the act. That purpose was to prevent the transmission of money or property from this country into enemy countries, where it would serve to increase the resources of the enemy. Such a purpose would be defeated if a German corporation were permitted to recover its money or property from this country and remove it into Germany, whether the stockholders thereof were citizens of Germany or of neutral countries. For in either event the resources of an enemy country would thereby be increased. The effect of such a provision would be magnified by the fact that subsection (6) includes partnerships, associations, and other unincorporated bodies of individuals outside the United States within the same class as corporations for the purposes of the subsection. The contention of the plaintiff therefore must necessarily apply to the former classes also, which adds confirmation to the decision herein reached. It may be noted that at the time when the amendment was enacted a technical state of war still existed between this country and Germany, and the provisions of the amendment clearly show that it was not intended by Congress to abandon the elementary purposes of the act.

We conclude accordingly that the favor of the amendment was not extended to corporations incorporated in countries other than the United States the capital stock of which was owned in whole or in part by subjects or citizens of Germany. This conclusion has the effect of course of excluding the plaintiff from the benefit of the amendment, since it is not denied that it was owned in part at least by citizens of Germany.

Various public letters and statements issued during the preparation and passage of the amendment, emanating from the Attorney General, the Secretary of State, and from members of Congress in contact with the bill, have been cited in support of the plaintiff's contention. These however relate to the general intent of the amend- [fol. 16] ment rather than to the particular provision now in ques-

tion. In a letter however to the Chairman of the House Committee on Interstate and Foreign Commerce written by the Attorney General, transmitting a draft of the proposed amendment, the latter in part said;

Under subsection (1) thereof will be permitted the return of property to all American citizens wherever resident, to citizens of Turkey and Bulgaria, and to persons whose property was sequestered because of the fact that they were doing business within enemy territory (provided they are not citizens of enemy countries).

The proviso last mentioned seems to be in line with subsection (6) as interpreted by the defendants, for the latter results in preventing a return of property to corporations whose real owners, the stockholders, are, whether entirely or in part, citizens of enemy countries. However we may say that the interpretation of paragraph (6) seems to us to be sufficiently clear to make it unnecessary to rely for assistance upon contemporaneous documents. On the other hand there is nothing unreasonable in the result which would follow from the adoption of the defendants' interpretation. It may well be said that the stockholders of a foreign corporation are virtually the corporation itself for the purposes of the act, and that if they are enemies the corporation should be regarded as such. It is true that the provision as thus interpreted has the result of classifying a corporation as an enemy even if only one stockholder out of many should be an enemy, and this may be said to be a drastic rule. But it would be difficult in practice to draw any other dividing line in such cases. Furthermore the President was empowered by the act to license corporations of this kind when he saw fit, and thereby prevent a seizure of their assets under the act. (Sections 4 and 5.)

It is suggested in behalf of the plaintiff that under the phraseology of the act Congress in appropriate cases designated the corporations as alien enemies or otherwise according to their own nationality and [fol. 17] not that of their stockholders. It may be noted however that corporate stock in domestic corporations when held by enemies, was seized by the Custodian like other property, and there is no reason to doubt that stock similarly held in foreign corporations would likewise have been seized, if found in this country and capable of being reduced to possession.

It may be added that when the United States permits a suitor to sue it in its courts, the case brought cannot be sustained unless both in form and substance it comes within the terms of the consent.

Affirmed with costs.

[fol. 18] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DISSENTING OPINION

Mr. Justice ROBB, dissenting:

The result in this case very largely depends upon whether this remedial legislation shall be liberally or narrowly interpreted.

In Section 2 (*c*) of the original Act of October 6, 1917, it is provided that the word "person" shall include corporations, and a reading of the Act and the amendment leaves little room for doubt that the word "citizen" likewise was intended to include and does include corporations. It follows, therefore, that under subsection (1) of Section 9 (*b*) of the amendatory Act of June 5, 1920, the Swiss National Insurance Company, appellant here, is brought within the scope of this remedial legislation.

I see nothing inconsistent with this view in the provisions of subsection (6). Under that subsection a German or Austrian corporation whose stock was entirely owned by citizens of other countries is brought within the provisions of the Act. It is plain that such corporations would not be within the provisions of subsection (1). Subsection (6), therefore, like the other subsections of Section 9, was intended to broaden rather than narrow the scope of the Act. In other words, its intent was to add and not to exclude a class.

Under the view of the majority, a Swiss Corporation with a capital stock of $1,000,000.00 would be excluded from the benefit of the Act if one share of its stock happened to be owned by a German citizen. Such a result could not have been contemplated by Con-[fol. 19] gress, and I do not think this legislation need be given an interpretation that would make it possible.

Believing that appellant, as a citizen of Switzerland, is entitled to the benefit of this Act, I am constrained to dissent from the opinion and judgment of the Court.

[fol. 20] Monday, May 7th, A. D. 1923.

* * * * * * *

[Title omitted]

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

DECREE

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be and the same is hereby affirmed with costs.

Per Judge George Ewing Martin, May 7, 1923.

Mr. Justice Robb dissenting.

Judge George Ewing Martin of the U. S. Court of Customs Appeals sat in this case in the place of Justice Van Orsdel.

[fol. 21] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR ALLOWANCE OF APPEAL—Filed July 6, 1923

Now comes the appellant in the above cause, and moves the Court for the allowance of an appeal to the Supreme Court of the United States, and respectfully shows to the Court:

First. The above case was a procedure in equity, originating in the Supreme Court of the District of Columbia, and appealed from that Court to the Court of Appeals of the District of Columbia. The case arose under the Trading with the Enemy Act, approved October 6, 1917, as amended June 5, 1920, and involved a construction of this law of the United States, and the constitutionality of a portion of the Act.

Second. Appellant contended that, under this Act it was entitled to the return of its property, in the hands of the Alien Property Custodian. Appellees denied the correctness of this contention. The Court sustained the appellees, by its decree filed May 7, 1923.

Third. The action of the Court of Appeals was final, and the third paragraph of Section 250 of the Act to Codify, Revise and Amend the laws Relating to the Judiciary, approved March 3, 1911, gives the right of appeal to the Supreme Court of the United States where the Constitutionality of any law of the United States is involved, and the sixth paragraph of said section gives the right of appeal to the Supreme Court of the United States in cases in which the construction of any law of the United States is drawn in question.

[fol. 22] Appellant requests that the bond required for the appeal be fixed at Three Hundred Dollars.

Hoke Smith, Attorney for Appellant.

Service of copy of the above motion is hereby acknowledged, this 6th day of July, 1923.

(S.) W. D. Hughes, For the Solicitor General.

[File endorsement omitted.]

[fol. 23] Wednesday, July 11th, A. D. 1923.

* * * * * * *

[Title omitted]

ORDER ALLOWING APPEAL

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be, and the same is hereby allowed, and the bond for costs is fixed in the sum of three hundred dollars.

[fol. 24] BOND ON APPEAL—For $300.00; approved, Robb, J.; filed July 25, 1923 [omitted in printing]

[File endorsement omitted.]

[fol. 25] CITATION AND SERVICE—Filed July 25, 1923

UNITED STATES OF AMERICA, *ss:*

To Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Swiss National Insurance Company, Limited, a corporation, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Charles H. Robb, Associate Justice of the Court of Appeals of the District of Columbia, this — day of July, in the year of our Lord one thousand nine hundred and twenty-three.

Chas. H. Robb, Associate Justice of the Court of Appeals of the District of Columbia.

Service accepted this 25 day of July A. D. 1923.

Peyton Gordon, U. S. Attorney.

[File endorsement omitted.]

[fol. 26] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed July 25, 1923

The Court of Appeals having entered a decree against the appellant in the above stated case, and the appellant having filed a motion for the allowance of an appeal to the Supreme Court of the United States, which has been approved by the Court, the appellant presents this its assignment of errors:

First. The Court erred in affirming the judgment, order and decree of the trial judge.

Second. The Court erred in its construction of the Trading with the Enemy Act approved October 6, 1917, 40 Stat. L., 411, as amended June 5, 1920, 41 Stat. L., 977, and in denying to appellant the return of its property described in the bill of complaint.

Third. The Court erred in holding that Subsection 1 of Section 9-*b* contained in the amendment of June 5, 1920, did not include corporations, and did not authorize the return to appellant of the property described in appellant's bill of complaint.

Fourth. The Court erred in holding that Subsection 6 of Section 9-*b* of said Act excluded corporations from Section 3, and prevented appellant from recovering the property described in appellant's bill of complaint.

Fifth. The Court erred in holding that if Subsection 1 included neutral corporations, there remained none for subsection 6 to refer to or govern.

Sixth. The Court erred in its construction of Subsection 1 and Subsection 6 of Section 9-*b* of said Act, and in its judgment and decree based upon said construction denying to appellant the right to recover its property described in its bill of complaint.

[fol. 27] Seventh. The Court erred in holding that the interpretation of paragraph 6 was sufficiently clear to make it unnecessary to rely for assistance upon contemporary documents and upon the report of the Committee on Interstate and Foreign Commerce of the House of Representatives.

Eighth. The Court erred in holding that Section 9-*a* of the Trading with the Enemy Act, as amended, and the Trading with the Enemy Act as a whole authorized the retention of the property of appellant described in its bill of complaint, after appellant had ceased to do business within enemy territory.

Ninth. The Court erred in holding that the Trading with the Enemy Act authorized the retention by the Custodian or the Secretary of the Treasury of the property of appellant described in its

bill of complaint after the war with Germany had been officially declared at an end.

Tenth. The Court erred in holding that the Trading with the Enemy Act authorized the retention by the Custodian or the Secretary of the Treasury of the property of appellant described in its bill of complaint after the appellant had ceased to do business within enemy territory.

Eleventh. The Court erred in holding that under the Constitution of the United States and principles of international law the Custodian could retain the property of a neutral corporation after the war had been officially declared at an end and after the neutral corporation had discontinued its business within enemy territory.

Respectfully submitted, Hoke Smith, Attorney for Appellant.

[File endorsement omitted.]

[fol. 28] IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD ON APPEAL—Filed July 25, 1923

The Clerk in the preparation of the Transcript of Record on Appeal to the Supreme Court of the United States in the above entitled cause will include the following, to wit:

1. Transcript of Record.
2. Argument of Cause.
3. Opinion.
4. Dissenting Opinion.
5. Decree.
6. Petition for Appeal to Supreme Court of The United States.
7. Order Granting Appeal and Fixing Amount of Bond.
8. Bond.
9. Citation with Acceptance of Service.
10. Assignment of Errors.
11. This Designation.

Hoke Smith, Attorney for Appellant.

[fol. 29] [File endorsement omitted.]

[fol. 30] COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered 1 to 28, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of Swiss National Insurance Company, Limited, a corporation, Appellant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, No. 3842, April Term, 1923, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this twenty-fifth day of July, A. D. 1923.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. [Seal Court of Appeals, District of Columbia.]

Endorsed on cover: File No. 29,774. District of Columbia Court of Appeals. Term No. 464. Swiss National Insurance Company, Limited, appellant, vs. Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States. Filed July 27th, 1923. File No. 29,774.